

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	John W. Darrah	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	99 C 1716	DATE	2/7/2001
CASE TITLE	INDUSTRIAL HARD CHROME vs. HETRAN, INC.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due ____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due ____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Defendant's motion to bifurcate the trial of claims I through V from the trial of claims VI and VII is granted. The decision should not be interpreted as a ruling on the admissibility of evidence in either trial. Enter memorandum opinion and order.
- (11) ☒ [For further detail see order (on reverse side of/attached to) the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	LG courtroom deputy's initials	Date/time received in central Clerk's Office	number of notices	Document Number 215
			date docketed FEB 8 2001	
			docketing deputy initials [Signature]	
			date mailed notice FEB 8 2001	
			mailing deputy initials	

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

INDUSTRIAL HARD CHROME,
LTD., IHC LIMITED PARTNERSHIP,
and BAR TECHNOLOGIES, L.L.C.,

Plaintiffs,

v.

HETRAN, INC. and GLOBAL
TECHNOLOGY, INC.,
HELMUT OERTMANN,
GTI ASSOCIATES, L.P.,
GISELA OERTMANN, and HGN, INC.

Defendants.

Case No. 99 C 1716

The Honorable John W. Darrah

DOCKETED

FEB 09 2001

MEMORANDUM OPINION AND ORDER

Plaintiffs, Industrial Hard Chrome, LTD.; IHC Limited Partnership; and Bar Technologies, L.L.C. ("Plaintiffs"), have filed a fifth-amended multi-count complaint against Defendants, Hetran, Inc.; Global Technology, Inc.; GTI Associates, L.P.; HGN, Inc.; Helmut Oertmann; and Gisela Oertmann. The first five counts involve the sale of a bar-processing machine from Defendant Hetran to Plaintiff IHC: (1) Breach of Contract, (2) Breach of Implied Warranty, (3) Breach of Express Guaranty, (4) Breach of Contract, (5) Breach of Implied Warranty of Merchantability. The last two counts (6 & 7) allege fraudulent conveyance to avoid a potential judgment on the contract claims. Defendants Hetran, Inc. and Global, Inc. ("Defendants") have moved to bifurcate the trial on the fraudulent conviction claims from the contractual claims pursuant to FED.R.CIV.P. 42(b). For the reasons that follow, the Court GRANTS Defendants' motion to bifurcate the trial of claims I through

V from the trial of claims VI and VII.

LEGAL STANDARD

A court may order a separate trial of any claim if it furthers judicial economy or avoids prejudice to a party. FED.R.Civ.P. 42(b). Only one of these criteria need to be satisfied for a court to order a separate trial. *Dewitt v. Kovalic*, 991 F.2d 1243, 1245 (7th Cir. 1993).

In considering a motion for bifurcation, the court must initially determine whether separate trials would avoid prejudice to a party or promote judicial economy. *Houseman v. U.S. Aviation Underwriters*, 171 F.3d 1117, 1120 (7th Cir. 1999). Next, the court must be satisfied that the decision to bifurcate does not unfairly prejudice the non-moving party. *Id.* Finally, separate trials must not be granted if doing so would violate the Seventh Amendment. *Hydrite Chemical Company v. Calumet Lubricants Co.*, 47 F.3d 887, 890 (7th Cir. 1995). Bifurcation violates the Seventh Amendment if a court divides “issues between separate trials in such a way that the same issue is reexamined by different juries.” *Matter of Rhone-Poulenc Rorer Inc.*, 51 F.3d 1293, 1303 (7th Cir. 1995). While both juries can examine overlapping evidence, they may not decide factual issues that are common to both trials and essential to the outcome. *Houseman v. U.S. Aviation Underwriters*, 171 F.3d 1117, 1125 (7th Cir. 1999).

The ultimate decision to bifurcate under FED.R.Civ.P. 42(b) is within the court’s discretion, and will be overturned only upon a clear showing of abuse. *McLaughlin v. State Farm*, 30 F.3d 861, 870 (7th Cir. 1994).

DISCUSSION

The potential for jury prejudice and confusion requires claims I to V to be tried separately from claims VI & VII.

Prejudice and Confusion

The trial of claims VI and VII involve completely different elements and proofs than those which form the basis of claims I through V. Given the nature of this case, if all seven claims were tried together, a significant likelihood of jury confusion and prejudice would be presented.

Trial of claims VI and VII based on fraudulent conveyance would involve presentation of complex financial accounting evidence regarding the timing and extent of Defendants' alleged insolvency. Defendants' alleged insolvency would turn on whether its contingent claims (i.e., legal exposure) exceeded its assets at the time of the transfers.¹ Determination of Defendants' legal exposure would involve presentation of evidence regarding the probability of success and potential damages liability on the contractual claims involved in Counts I through V. Introduction of probability evidence from risk assessment professionals concerning the legal viability of claims I through V (to allegedly assist the jury in its consideration of claims VI & VII) presents a serious likelihood of confusion and prejudice for a jury hearing the contract action.

In reaching this conclusion, the Court has carefully read the Seventh Circuit's decision in *Dewitt v. Kovalic*, 991 F.2d 1243, 1245 (7th Cir. 1993). The facts in this case are materially different from the facts presented in *Dewitt*. In *Dewitt*, the defendant acknowledged that the unpaid fees exceeded his total assets at the time of the transfers. *Id.* at 1245. In short, the defendant did not dispute the magnitude of his potential liability. Here, the issue of damages is hotly disputed, and determination of Defendants' insolvency (an element of fraudulent conveyance) depends directly on

¹ The "expected value" of the Defendant's contingent (legal) liability would generally be expressed as the probability of loss multiplied by the amount of the potential loss. However, since the magnitude of damages is at issue in this trial, this formula might become increasingly complex, as the "expected value" of the exposure becomes the sum of the varying levels of loss multiplied by their attendant probabilities.

the extent of Defendants' legal exposure at the time of the transfers. The facts of this case surrounding Plaintiffs' fraudulent conveyance claims are significantly more complex and potentially prejudicial than those in *Dewitt* and, therefore, require bifurcation.

Furthermore, and of at least equal importance, the allegations of fraud and the proofs and connotations inherent in a trial on claims VI and VII pose a further threat of jury prejudice in concurrently considering the evidence on claims I through V.

Prejudice to the Non-Moving Party

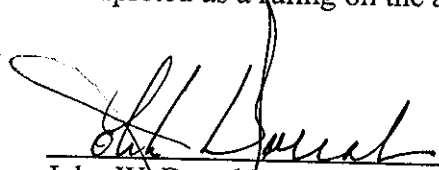
In exercising its discretion to bifurcate, the Court finds that bifurcation would not unfairly prejudice the non-moving party. Plaintiffs have not shown how it would be prejudiced. Therefore, the Court finds that the Plaintiffs would not be unfairly prejudiced.

Seventh Amendment Concerns

Bifurcation of claims VI and VII will not require separate juries to consider factual issues that are common to both trials and essential to the outcome. The issue of Defendants' solvency (more specifically the amount of assets the Defendants should maintain to cover its legal exposure to remain "financially solvent") is distinct from the legal determination of Defendants' liability. Bifurcation of claims VI and VII will not impact either party's Seventh Amendment rights.

CONCLUSION

Defendants' Motion to bifurcate the trial of claims I through V from the trial of claims VI and VII is GRANTED. This decision should not be interpreted as a ruling on the admissibility of evidence in either trial.


John W. Darrah, Judge
United States District Court

Date:

February 7, 2001